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No. 91-913

In the Supreme Court of the United States

October Term, 1991

John R. Patterson,

Petitioner,

v.

Joseph B. Shumate, Jr.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF OF LINCOLN NATIONAL CORPORATION AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the anti-alienation provisions of the Employee Retirement Security Act of 1974 (ERISA) constitute "applicable nonbankruptcy law" within the meaning of Section 541(c)(2) of the Bankruptcy Code (11 U.S.C.) so that a bankruptcy trustee may not acquire a debtor's assets in an ERISA plan that could not be reached by creditors outside of bankruptcy.

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Lincoln National Corporation moves this Court for an order granting Lincoln National leave to file its Brief as Amicus Curiae Supporting Respondent. Respondent (the debtor) has consented to Lincoln National's filing, but petitioner (the trustee in bankruptcy) has not. In support of this motion, Lincoln National states:

1. This case presents an issue of great importance to Lincoln National -- *i.e.*, whether the anti-alienation provisions of the Employee Retirement Security Act of 1974 (ERISA) constitute "applicable nonbankruptcy law" within the meaning of Section 541(c)(2) of the Bankruptcy Code (11 U.S.C.) so that a bankruptcy trustee may not acquire a debtor's assets in an ERISA plan that could not be reached by creditors outside of bankruptcy.

2. Lincoln National Corporation sponsors an ERISA savings and retirement program for its employees -- the Lincoln National Corporation Employee Profit & Savings Plan. The Lincoln National Plan has more than 8,400 participants. The Lincoln National Plan is qualified under Section 401 of the Internal Revenue Code and contains the anti-alienation provisions mandated by ERISA, the Internal Revenue Code, and IRS regulations.

3. From time to time, bankruptcy trustees have attempted to reach assets held by the Lincoln National Plan. Currently, the Lincoln National Plan is a defendant-appellant in three adversary proceedings in the United States District Court for the Northern District of Indiana. In those cases, the bankruptcy court ordered the Lincoln National Plan to disregard the terms of its Plan and to turn over ERISA trust funds to the bankruptcy trustee. The Lincoln National Plan has appealed those orders to the district court. The Court's decision in this case very likely will determine the outcome of those pending cases.

4. Lincoln National's main interest is to ensure that this Court follows the plain terms of the Bankruptcy Code so that the access restrictions in its profit and savings plan are governed exclusively by federal law -- *i.e.*, ERISA and the Internal Revenue Code. If petitioner's argument were accepted by this Court -- so that the Bankruptcy Code would only respect state

spendthrift-trust laws -- then Lincoln National would be obliged to draft its Plan in accordance with the varied laws of many different states. And Lincoln National could never be sure that its Plan's access restrictions would be upheld by the various states' laws. That is important because the Internal Revenue Service has threatened a loss of tax-qualification status to ERISA plans that turn over funds to bankruptcy trustees. Lincoln National, of course, has a strong interest in avoiding such a result so as to protect the interests of its thousands of Plan participants.

5. We believe that Lincoln National's amicus curiae brief will assist the Court in at least two ways. First, the Court's decision in this case will likely affect all ERISA pension and profit and savings plans. The particular plan at issue in this case, however, does not resemble many ERISA pension plans. In this case, respondent largely controlled the plan and was its principal participant. Accordingly, Lincoln National can aid the Court by presenting the perspective of a different kind of ERISA-qualified plan -- *i.e.*, a large pension plan not controlled by any participant and with thousands of employee participants across the nation. In short, Lincoln National can speak from the perspective of an ERISA plan, not from the parochial viewpoint of a debtor or a bankruptcy trustee. Second, many courts have thought that the practice under the old Bankruptcy Act is relevant to a proper interpretation of the new Bankruptcy Code. Petitioner also makes that argument in his brief. Our amicus brief will be helpful on that point because Lincoln National has researched the old practice and has discovered material that no court has yet addressed.

Wherefore, Lincoln National asks this Court to grant it leave to file its amicus curiae brief supporting respondent.

Respectfully submitted,

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BRIEF OF LINCOLN NATIONAL CORPORATION AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF AMICUS CURIAE

Lincoln National Corporation sponsors an ERISA savings and retirement program for its employees -- the Lincoln National Corporation Employee Profit & Savings Plan. The Lincoln National Plan has more than 8,400 participants. The Lincoln National Plan is qualified under Section 401 of the Internal Revenue Code and contains the anti-alienation provisions mandated by ERISA, the Internal Revenue Code,

and IRS regulations. From time to time, bankruptcy trustees have attempted to reach assets held by the Lincoln National Plan. Currently, the Lincoln National Plan is a defendant-appellant in three adversary proceedings in the United States District Court for the Northern District of Indiana. In those cases, the bankruptcy court ordered the Lincoln National Plan to disregard the terms of its Plan and to turn over ERISA trust funds to the bankruptcy trustee. Lincoln has appealed those orders to the district court.

Lincoln National's primary interest in this case is to ensure that this Court follows the plain terms of the Bankruptcy Code so that the access restrictions in its pension plan are governed exclusively by federal law -- *i.e.*, ERISA and the Internal Revenue Code. That result will allow the Lincoln National Plan to look to one uniform body of law as the Plan drafts rules governing a participant's access to trust funds.

STATEMENT AND SUMMARY OF ARGUMENT

1. Petitioner, a bankruptcy trustee, seeks to recover as part of the bankruptcy estate the debtor's vested interest in a qualified ERISA pension plan. That plan, as required by ERISA and the Internal Revenue Code, has "non-alienation provision[s]" that "'prevent both voluntary and involuntary encroachments on vested benefits.'" 943 F.2d 362, 364 (4th Cir. 1991) (citation omitted). Petitioner claims that those anti-alienation provisions are not valid in bankruptcy. The merit of petitioner's claim depends on the proper interpretation of Section 541(c)(2) of the Bankruptcy Code. Section 541(c)(2) provides that "[a] restriction on the transfer of a beneficial interest of the debtor in trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under" the Bankruptcy Code.

The district court agreed with petitioner that the phrase "applicable nonbankruptcy law" in Section 541(c)(2) includes only state laws governing so-called spendthrift trusts. 943 F.2d at 363. The district court then held that the plan in this case did not qualify as a spendthrift trust under Virginia law; therefore, the court ruled that the plan's anti-alienation provisions were invalid in bankruptcy. Accordingly, the district court held that the debtor's funds in the ERISA plan were part of the bankruptcy estate. *Ibid.*

2. The court of appeals reversed. The court wrote that "the plain language" of Section 541(c)(2) is "not limited to state law but" also "embrace[s] federal statutes, including ERISA." 943 F.2d at 363-64. The Fourth Circuit, therefore, ruled that the anti-alienation provisions of ERISA qualify as "applicable nonbankruptcy law." Hence, the court of appeals held that the debtor's interest in a qualified ERISA pension plan was not part of the bankruptcy estate.

3. The Fourth Circuit's decision is correct. The last four circuits to consider the issue have agreed that the plain meaning of the phrase "applicable nonbankruptcy law" is broad enough to encompass federal statutes such as ERISA. *See also Gladwell v. Harline*, 950 F.2d 669 (10th Cir. 1991); *Velis v. Kardanis*, 949 F.2d 78 (3d Cir. 1991); *In re Lucas*, 924 F.2d 597 (6th Cir.), *cert. denied*, 111 S. Ct. 2275 (1991) In any event, the legislative history of Section 541(c)(2) plainly supports that natural reading of the statute. Furthermore, the court of appeals' decision has the virtues of: (1) reconciling the Bankruptcy Code with ERISA, and (2) making the drafting of ERISA pension plans exclusively a matter of federal law. For all those reasons, the Fourth Circuit's decision should be affirmed.

ARGUMENT

1. We agree with the Fourth Circuit that this is a "plain meaning" case. The meaning of "applicable nonbankruptcy law" in Section 541(c)(2) is evident. If, outside of bankruptcy proceedings, a debtor and his creditors could not reach the debtor's funds held in trust (*i.e.*, under "nonbankruptcy law"), then the bankruptcy estate does not include the debtor's interest in such trust funds. In adopting the Bankruptcy Code, Congress did not attempt to micro-manage the area of trust law by setting forth the types of trust laws that qualify as "nonbankruptcy law." Rather, Congress used the sweeping phrase "nonbankruptcy law," which is broad enough to include both federal statutes and state laws that enforce access restrictions in trust instruments.

This case likely would never have reached this Court but for the Fifth Circuit's decision in *In re Goff*, 706 F.2d 574 (5th Cir. 1983), on which petitioner relies. In that case, the court held that the phrase "applicable nonbankruptcy law" in Section 541(c)(2) did not include federal law -- in particular ERISA. The *In re Goff* court did not ask whether Section 541(c)(2) has a facially plain meaning. *See* 706 F.2d at 581. Instead, after noting that Section 541(c)(2) is "facially broad" (*ibid.*), the *In re Goff* court went directly to the statute's legislative history. And the court ruled that the statute's legislative history showed that "Congress intended by its reference to 'applicable nonbankruptcy law' to exempt from the estate only those 'spendthrift trusts' traditionally beyond the reach of creditors under state law." 706 F.2d at 582.

In light of more recent decisions of this Court, it is clear that the *In re Goff* court's method of statutory interpretation was incorrect. As the Court stated in *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989), "[l]egislative history is

irrelevant to the interpretation of an unambiguous statute." *Id.* at 808 n.3. In other words, "[j]udicial inquiry is complete" when the court finds "the terms of a statute unambiguous." *Burlington Northern R.R. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987) (citation omitted). And, in this case, the phrase "applicable nonbankruptcy law" in Section 541 unambiguously includes both federal and state laws.

2. In any event, the legislative history of Section 541(c)(2) supports the Fourth Circuit's decision. The House of Representatives committee report pertaining to Section 541(c)(2) states:

> The bill also continues over the exclusion from property of the estate of the debtor's interest in a spendthrift trust to the extent the trust is protected from creditors under applicable State law. The bankruptcy of the beneficiary should not be permitted to defeat the legitimate expectations of the settlor of the trust.

H.R. Rep. No. 95-595, 95th Cong., 2d Sess. 176 (1977). This passage undoubtedly shows that Congress intended that state laws governing spendthrift trusts would fall within the category of "applicable nonbankruptcy law." But there is no indication in the report that Congress thought that the phrase "applicable nonbankruptcy" law included *only* such state laws. The committee report simply does not attempt to list all the types of "nonbankruptcy laws" that govern restrictions on transfers of trust funds.

Indeed, the principle announced in the House committee report is wholly consistent with the natural meaning of the statutory language -- *i.e.*, the Bankruptcy Code respects both federal and state laws upholding restrictions on the transfer of trust funds. The report's basic principle, on which the *In re Goff*

court relied (706 F.2d at 582), is that Congress wanted to "continue[] over" the prior bankruptcy law regarding assets held in trusts. H.R. Rep. No. 95-595, at 176. Petitioner incorrectly assumes (Br. 39-42), however, that the old Bankruptcy Act only incorporated state spendthrift-trust laws.

To be sure, before the passage of ERISA, state law most commonly governed the question whether trust assets could be alienated. *See, e.g., In re Ahlswede*, 516 F.2d 784, 786 (9th Cir.), *cert. denied*, 423 U.S. 913 (1975). Under the old Bankruptcy Act, however, the courts also looked to *federal* statutes regarding alienability in cases "where the trust is one created and controlled by federal law." 4A *Collier on Bankruptcy* § 70.26, at 365-66 (14th ed. 1978). For example, the courts ruled that federal law prohibited alienation of certain assets held in trust for Indians and, therefore, those assets did not become a part of the bankruptcy estate. *See Taylor v. Tayrien*, 51 F.2d 884 (10th Cir. 1931); *In re Denison*, 38 F.2d 662 (W.D. Okl. 1930). Accordingly, if the House report confirms that Congress wanted Section 541(c)(2) to continue prior practice (as petitioner argues), it still follows that the new Bankruptcy Code incorporates *both* state and federal statutes that protect trust assets from the reach of creditors.

3. At bottom, petitioner is advancing an incredible claim of congressional intent. In 1974, Congress made important aspects of trust law a matter of federal law when it passed ERISA, including its anti-alienation provisions. ERISA governs pension plans, which are trusts administered for the benefit of employees. In adopting ERISA, Congress preempted state law and made federal law the exclusive body of law governing such trusts. *See* 29 U.S.C. 1144(a). Four years later, Congress passed Section 541(c)(2) of the Bankruptcy Code. When Congress passed the Bankruptcy Code in 1978, it is

incredible to believe that Congress implictly undermined the ERISA statute that it had so recently enacted.

Moreover, petitioner's view of congressional intent (if accepted) would effectively require sponsors of ERISA pension plans to draft plans to meet the vagaries of each state's spendthrift- trust laws. But Congress adopted ERISA precisely to avoid such state-by-state regulation of pension plans. As this Court stated in *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478 (1990), the goal of ERISA was "to ensure that plans and plan sponsors would be subject to a uniform body of [federal] law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Id.* at 484. It makes no sense, therefore, to believe that Congress used the broad phrase "nonbankruptcy law" in Section 541(c)(2) to include state laws pertaining to trusts but to exclude Congress's own highly significant statute -- ERISA.

4. It is important for the Court to keep in mind that this type of case cannot be resolved simply by noting that it involves an ERISA plan. The key question is whether the debtor's funds held in trust were restricted from alienation under the terms of the trust instrument on the date the debtor filed his bankruptcy petition.[1] If the funds were so restricted, then Section 541(c)(2) asks whether those restrictions are valid under state or federal laws, including ERISA. By contrast, if the debtor has a present right to withdrawal the funds, or the present right to receive

[1]Under the Bankruptcy Code, "the critical time as of which the property comprising the estate is to be determined . . . is the date upon which the petition is filed." 4 L. King, Collier on Bankruptcy § 541.04, at 541-22 (15th ed. 1991).

income, then Section 541(c)(2) and ERISA would not create a restriction on alienation that does not otherwise exist.

This explains why petitioner is mistaken in asserting (Br. 25-29) that Section 541(c)(2) cannot encompass ERISA because that would render meaningless the exemption in Section 522(d)(10)(E). Section 522 applies in a case where an ERISA pension-plan participant has a present right to funds held in the plan (*e.g.*, the participant is in "pay status"). Such funds would not be excluded by the terms of the ERISA plan or by Section 541(c)(2); therefore, Section 522(d)(10)(E) is needed to provide a limited exemption for reasonable support of the debtor and his family. *See Gladwell v. Harline*, 950 F.2d at 675; *Velis v. Kardanis*, 949 F.2d at 82.

5. Petitioner argues (Br. 55-58) that the Fourth Circuit's reading of the pertinent statutes is so unfair that this Court should create an "equitable exception" to those laws. But Section 541(c)(2) of the Bankruptcy Code was expressly designed to keep certain assets of the debtor held in trust from the reach of creditors. Similarly, as this Court noted in *Guidry v. Sheet Metal Workers National Pension Fund*, 110 S. Ct. 680 (1990), the anti-alienation provisions in ERISA were enacted to protect pension plan assets from creditors. The Court in *Guidry* stated that the anti-alienation provisions of ERISA represent a "considered congressional policy choice" that necessarily "hinder[s] the collection of a lawful debt." 110 S. Ct. at 687. Congress made that policy decision as part of its effort "to safeguard an income stream for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them." *Ibid.* Congress was willing to accept that consequence in order to protect a pensioner's retirement income, and that policy choice applies equally in all situations

-- including bankruptcy. Accordingly, the courts are not now free to create exceptions to the anti-alienation provisions; "[i]f exceptions to this policy are to be made, it is for Congress to undertake that task." *Guidry*, 110 S. Ct. at 687.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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